

NEW CODE OF JUDICIAL CONDUCT PROPOSED

After more than six months of intensive study, the Commission on Judicial Conduct and the Judicial Ethics Advisory Committee have submitted a new Code of Judicial Conduct to the Supreme Court for its review and consideration. The proposed code is based on the American Bar Association's 1990 Model Code of Judicial Conduct that is now being considered by supreme courts and judges associations throughout the country. Former Chief Justice Gordon invited the two organizations to evaluate the Model Code prior to his retirement, and Chief Justice Feldman encouraged the continuation of the project when he assumed office earlier this year.

The new code is the most significant revision of the ethical standards since 1975. It emphasizes mandatory provisions rather than aspirational goals, expands and reorganizes major sections of the code, and reduces the number of canons from seven to five. For the first time, it also includes a preamble that provides guidelines for interpreting the code, a terminology section the will en-

courage the uniform application of definitions, and extensive commentary that will assist judges in applying the code. Moreover, it eliminates the gender-based language that appears in earlier versions.

As a blend of the old and the new, the proposed code follows much of the structure and language of the 1990 Model Code. It also reflects the intent of the Commission and the Advisory Committee to adopt the best parts of the Model Code while retaining the time-tested provisions of the existing Arizona Code that are easier to understand.

The proposed code was submitted to the Supreme Court in a Rule 28 proceeding and will not be released for comment until the Court completes its initial review of the petition. In the meantime, copies of the ABA's 1990 Model Code are available from the Commission free of charge. While supplies last, judges and courthouse librarians can obtain copies by calling 542-5200.

Commission Approves Definitions of Sanctions

The Commission on Judicial Conduct recently approved a set of working definitions for disciplinary sanctions used in informal and formal proceedings. The sanctions available to the commission are defined in several places in the state constitution and the rules of procedure approved by the Supreme Court. Pulling the definitions together in one place will make it easier to apply the sanctions across a variety of situations. The definitions are summarized below. The source of each sanction is shown in brackets.

Informal Dispositions

Informal dispositions are flexible sanctions designed to resolve problems privately, effectively and fairly under the commission's rules of procedure. They include private admonitions and reprimands, which are defined separately, as well as the following:

- ! Adjusting a complaint informally [Rule 4(f)(1)];
- ! Directing professional counseling and assistance for a judge [Rule 4(f)(3)];
- ! Imposing conditions on a judge's conduct [Rule 4(f)(4)];
- ! Instructing a judge to make specific changes in particular matters of conduct [Rule 6(f)(1)];
- ! Recommending that a judge obtain specified counseling or treatment [Rule 6(f)(2)];
- ! Suggesting that a judge retire [Rule 6(f)(3)]; or

- ! Encouraging a judge to resign, with or without agreeing to refrain from performance of judicial duties, as the commission may direct [Rule 6(f)(4)].

Admonition. An admonition is a private communication reminding a judge of ethical responsibilities and giving a gentle or friendly warning to avoid future misconduct or inappropriate practices. An admonition may be used to give authoritative advice and encouragement or to express disapproval of behavior that suggests the appearance of impropriety even though it meets minimum standards of judicial conduct. [Rule 4(f)(2)]

Reprimand. A reprimand is a private communication that declares a judge's conduct unacceptable under one of the grounds for judicial discipline but not so serious as to merit a public sanction. [Rule 4(f)(1)].

Formal Dispositions

Formal dispositions are public sanctions administered by the Supreme Court on recommendation of the commission. They are based on findings that a judge is guilty of wilful misconduct in office, wilful and persistent failure to perform judicial duties, habitual intemperance, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute. By rule, formal charges must be heard in proceedings that are open to the public. If the charges are proven, the commission may recommend any of the sanctions shown on the next page.

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Censure. A censure is a public declaration by the Supreme Court that a judge is guilty of misconduct that does not require removal from office. [Art. 6.1, § 4]

Suspension. A suspension is a decision by the Supreme Court to suspend a judge from office temporarily, with or without pay, for serious misconduct that merits more than a censure but less than removal. This sanction is flexible, and there are no restrictions on the length of a suspension. [Art. 6.1, §§ 2, 3 and 4]

Removal. Removal is a decision by the Supreme Court to remove a judge permanently from office for serious misconduct. [Art. 6.1, § 4]

Retirement. Retirement is a decision by the Supreme Court to retire a judge for a

disability that seriously interferes with the performance of judicial duties that is or is likely to become permanent. [Art. 6.1, §4]

New Advisory Opinions

The Judicial Ethics Advisory Committee has issued nine advisory opinions so far this year. The issues addressed in the new opinions are summarized below. The full opinions will be distributed at the end of the year as supplements to the judge's reference manual. Advance copies of advisory opinions can be obtained by calling or writing the committee's office.

Opinion 92-1

A judge may not order supervised visitation in child custody cases through a social service agency administered by a member of the judge's immediate family, unless it is the only agency available, nor can the judge serve as the presiding judge of the conciliation court with responsibility for dealing with the agency. Issued: January 24, 1992.

Opinion 92-2

Under certain circumstances, it is ethical for a judge to sentence a person, as a result of a plea agreement between the prosecutor and the defendant, to participate in an educational program sponsored by a private, non-governmental organization. Issued: January 30, 1992.

Opinion 92-3

Administrative law judges are not members of the state judiciary and are not subject to the provisions of the Code of Judicial Conduct. Issued: January 31, 1992

Opinion 92-4

A judge who presides over medical malpractice cases cannot accept self-published, co-authored books on medical malpractice for office use from an attorney who frequently argues before the judge. Issued: February 20, 1992.

Opinion 92-5

A full-time judge may not hold a position on the board of directors of a bank. Issued: April 7, 1992.

Opinion 92-6

A judge may serve as a character reference or provide a letter of recommendation for a person who applies for an appointment on a government agency or board. With qualifications, the letter can be prepared on the judge's official stationery. Issued: April 17, 1992.

Opinion 92-7

A judge may serve as a member of an advisory commission to the State Bar's Board of Legal Specialization. Issued: May 14, 1992.

Opinion 92-8

A superior court judge may serve as a member of a Supreme Court committee that makes recommendations for awarding grants to programs in which the judge is a likely participant. Issued: June 4, 1992.

Opinion 92-9

Upon retirement from the bench, appellate court judges may retain complimentary reporter volumes received during their terms of office if they accepted the books as personal gifts. Issued: June 5, 1992.

Membership Changes

Superior Court Judge Barry Silverman was appointed in May to succeed Judge Robert Bean on the Judicial Ethics Advisory Committee. Judge Bean, who served for many years on the Advisory Committee both before and after its reorganization, filled one of two positions on the committee reserved for superior court judges. In addition, Judge Robert Donfeld, a justice of the peace from Tucson was appointed to another two-year term on the committee.

During the summer, Judge John Taylor of Division One of the Court of Appeals, announced his retirement from the bench, automatically triggering the appointment of a replacement on the Commission on Judicial Conduct. Judge Taylor held one of two positions reserved for appellate court judges. He was succeeded by Judge William Druke of Division Two who will serve the unexpired portion of Judge Taylor's term.

The *Bulletin* is published periodically by the Commission on Judicial Conduct and the Judicial Ethics Advisory Committee as a service to the Arizona Judiciary. For more information write the commission or committee staff at 1501 W. Washington Street, Suite 229, Phoenix, Arizona 85007; or call (602) 542-5200.
